THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Civil Revision No. 30 of 2006

1. State of Uttaranchal through Collector Udham Singh Nagar.
2. Executive Engineer, National High Way Division, P.W.D., Haldwani.
3. Nagar Palika Kashipur through Executive Officer, Nagar Palika Board, Kashipur, District Udham Singh Nagar.

…. Revisionists.

Versus

1. Sri Puran Singh, S/O Shaym Lal, R/O Mohalla Katoratal, Kashipur, District Udham Singh Nagar.
2. Smt. Sabia Begum, W/O Mohd. Sultan, R/O Mohalla Gannj, Kashipur, District Udham Singh Nagar.

…Respondents.

Sri Bhupender Singh, learned Standing Counsel for the revisionists-State.

Dated May 18, 2006.

PC:
(Hon'ble B.S. Verma, J.)

This revision has been filed under Section 115 of the Code of Civil Procedure against the order, dated 16-3-2006, passed by the Additional Civil Judge (Junior Division) Kashipur (Udham Singh Nagar), in Civil Suit No. 138 of 1998, Puran Singh and another Vs. State of U.P. and others, whereby the learned Judge decided the Additional Issue No. 4 regarding jurisdiction of the civil court against the revisionists.

Brief facts of the case are that the respondents filed a suit (Civil Suit No. 138 of 1998) for permanent injunction restraining the revisionists from evicting him from the land in question. The suit was contested by the revisionists by filing its written statement and it was stated that the land in question is a National Highway land bearing No. 121 and is government property and the same is in their possession. The plaintiff-respondents have raised the construction after encroachment on the government land in violation of the provisions of Road Side Control Act.

On the pleadings of the parties, the learned Trial Court framed issues and an additional issued was framed regarding the bar of jurisdiction of civil court in view of the provision of Sections 14 and 15 of The Control of National Highways (Land and Traffic) Act, 2002 (***for short the Act***) which came into force w.e.f. 27-1-2005. The said issue has been decided vide order dated 16-3-2006 holding that since the suit is pending prior to enforcement of the said Act, the civil court has jurisdiction to entertain the suit and it is not barred by the provisions of Section 15 of the said Act.

The revision has been filed on the ground that the learned Court below committed a manifest error of law in holding that the provisions of the Act were not applicable to the pending suits. It is asserted that by virtue of the provisions of Sections 14 and 15 of the said Act, the jurisdiction of civil courts has been excluded regarding all the matters pertaining to the National Highways and the civil court ought to have returned the plaint with a direction to raise the matter before the competent authority under the said Act.

At the very outset, it may be noted that Section 1(3) of the aforesaid Act provides ***that "it shall come into force on such date as the Central Government may by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act."***

Section 14 of the Act provides for jurisdiction, powers and authority of Tribunal, which reads as under:-

"A Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain appeals from the orders passed or actions (except issuance or serving of notices) taken under sections 26, 27, 28, 36, 37 and 38 by the

Highway Administration or an officer authorised on its behalf, as the case may be."

Section 15 deals with Bar of jurisdiction and it is provided that "on and from the appointed day, no court (except the Supreme Court and High Court exercising jurisdiction under articles 226 and 227 of the Constitution) or other authority, except the Tribunal shall have, or be entitled to exercise, any jurisdiction, powers or authority in relation to the matters specified in section 14."

The provisions of the Act came into force since 27th January, 2005. This fact has not been disputed by the learned Standing counsel. It is and admitted fact that the Civil Suit No. 138 of 1998, which was filed by the Opposite Party-respondents was instituted in the year 1998. The learned Standing Counsel could not show any provision under the said Act, which could lead to an inference that the jurisdiction of civil court is barred in respect of pending suits filed against the revisionists by any person prior to the coming into force of the Act. Moreover, it has not been pleaded or argued by the learned Standing Counsel that the Civil Suit filed by the respondents against the State and pending before the trial court is a result of the orders or actions taken under Section 26 to 28 and 36 to 38 of the Act.

In view of above, I find no infirmity in the impugned order. The revision preferred by the State is devoid of merit and is liable to dismissed at admission stage.

The revision is hereby dismissed in-limine.

(B.S. Verma, J.)

RCP